

(v) Operating an Internet web site that permits numerous buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counter-parties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves;

(vi) Operating a telephone call center that provides permissible finder services; and

(vii) Providing electronic communications services relating to all aspects of transactions between buyers and sellers;

(2) Providing electronic bill presentment services;

(3) Offering electronic stored value systems;

(4) Safekeeping for personal information or valuable confidential trade or business information, such as encryption keys; and

(5) Issuing electronic letters of credit within the scope of 12 CFR 7.1016.

(b) *Applicability of guidance and requirements not affected.* When a national bank performs, provides, or delivers through electronic means and facilities an activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver, the electronic activity is not exempt from the regulatory requirements and supervisory guidance that the OCC would apply if the activity were conducted by non-electronic means or facilities.

(c) *State laws.* As a general rule, and except as provided by Federal law, State law is not applicable to a national bank's conduct of an authorized activity through electronic means or facilities if the State law, as applied to the activity, would be preempted pursuant to traditional principles of Federal preemption derived from the Supremacy Clause of the U.S. Constitution and applicable judicial precedent. Accordingly, State laws that stand as an obstacle to the ability of national banks to exercise uniformly their Federally authorized powers through electronic means or facilities, are not applicable to national banks.

[61 FR 4862, Feb. 9, 1996, as amended at 73 FR 22242, Apr. 24, 2008]

§ 7.5003 Composite authority to engage in electronic activities.

Unless otherwise prohibited by Federal law, a national bank may engage in an electronic activity that is comprised of several component activities if each of the component activities is itself part of or incidental to the business of banking or is otherwise permissible under Federal law.

§ 7.5004 Sale of excess electronic capacity and by-products.

(a) A national bank may, in order to optimize the use of the bank's resources or avoid economic loss or waste, market and sell to third parties electronic capacities legitimately acquired or developed by the bank for its banking business.

(b) With respect to acquired equipment or facilities, legitimate excess electronic capacity that may be sold to others can arise in a variety of situations, including the following:

(1) Due to the characteristics of the desired equipment or facilities available in the market, the capacity of the most practical optimal equipment or facilities available to meet the bank's requirements exceeds its present needs;

(2) The acquisition and retention of additional capacity, beyond present needs, reasonably may be necessary for planned future expansion or to meet the expected future banking needs during the useful life of the equipment;

(3) Requirements for capacity fluctuate because a bank engages in batch processing of banking transactions or because a bank must have capacity to meet peak period demand with the result that the bank has periods when its capacity is underutilized; and

(4) After the initial acquisition of capacity thought to be fully needed for banking operations, the bank experiences either a decline in level of the banking operations or an increase in the efficiency of the banking operations using that capacity.

(c) Types of electronic capacity in equipment or facilities that banks may have legitimately acquired and that may be sold to third parties if excess to the bank's needs for banking purposes include:

(1) Data processing services;